



DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the ADDRESSES

section of this notice. ICRs also are available at [reginfo.gov](http://www.reginfo.gov)
(<http://www.reginfo.gov/public/do/PRAMain>).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before [INSERT DATE THAT IS 60 DAYS FOLLOWING THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Room N-5718, Washington, DC 20210, (202) 693-8410, FAX (202) 693-4745 (these are not toll-free numbers).

I. SUPPLEMENTARY INFORMATION:

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor

Title: Prohibited Transaction Exemption 86-128

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0059

Affected Public: Businesses or other for-profits; Not-for-profit institutions

Respondents: 27,900

Responses: 1,199,800

Estimated Total Burden Hours: 63,800

Estimated Total Burden Cost (Operating and Maintenance): \$736,800

Description: Prohibited Transaction Class Exemption 86-128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for the benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by insurance companies. This exemption provides relief from certain prohibitions in section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1)(E) or (F).

In order to insure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department has included in the exemption five information collection requirements. The first requirement is written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction with the broker-fiduciary. The second requirement is, within three months of the authorization, the broker-fiduciary furnish the independent fiduciary with any reasonably available information necessary for the independent fiduciary to determine whether an

authorization should be made. The information must include a copy of the exemption, a form for termination, and a description of the broker-fiduciary's brokerage placement practices. The third requirement is that the broker-fiduciary must provide a termination form to the independent fiduciary annually so that the independent fiduciary may terminate the authorization without penalty to the plan; failure to return the form constitutes continuing authorization. The fourth requirement is for the broker-fiduciary to report all transactions to the independent fiduciary, either by confirmation slips or through quarterly reports. The fifth requirement calls for the broker-fiduciary to provide an annual summary of the transactions. The annual summary must contain all security transaction-related charges incurred by the plan, the brokerage placement practices, and a portfolio turnover ratio. The ICR was approved by the Office of Management and Budget (OMB) under OMB Control Number 1210-0059 and is scheduled to expire on January 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Consent to Receive Employee Benefit Plan Disclosures Electronically

Type of Review: Extension of a currently approved information collection

OMB Number: 1210-0121

Affected Public: Businesses or other for-profits.

Respondents: 37,086

Responses: 3,176,585

Estimated Total Burden Hours: 15,453

Estimated Total Burden Cost (Operating and Maintenance): \$158,829

Description: The Department established a safe harbor pursuant to which all pension and welfare benefit plans covered by Title I of ERISA may use electronic media to satisfy disclosure obligations under Title I of ERISA (29 CFR 2520.104b-1). Employee benefit plan administrators will be deemed to satisfy their disclosure obligations when furnishing documents electronically only if a participant who does not have access to the employer's electronic information system in the normal course of his duties, or a beneficiary or other person entitled to documents, has affirmatively consented to receive disclosure documents. Prior to consenting, the participant or beneficiary must also be provided with a clear and conspicuous statement indicating the types of documents to which the consent would apply, that consent may be withdrawn at any time, procedures for withdrawing consent and updating necessary information, the right to obtain a paper copy, and any hardware and software requirements. In the event of a hardware or software change that creates a material risk that the individual will be unable to access or retain documents that were the subject of the initial consent, the individual must be provided with information concerning the revised hardware or software, and an opportunity to withdraw a prior consent. The ICR was approved by OMB under OMB Control Number 1210-0121 and is scheduled to expire on January 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Furnishing Documents to the Secretary of Labor on Request Under ERISA 104(a)(6)

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0112

Affected Public: Businesses or other for-profits; Not-for-profit institutions

Respondents: 300

Responses: 300

Estimated Total Burden Hours: 22

Estimated Total Burden Cost (Operating and Maintenance): \$1,300

Description: As a result of the Taxpayer Relief Act of 1997 (TRA 97), the plan administrators of ERISA-covered employee benefit plans no longer need to file copies of the summary plan descriptions and summaries of material modifications that are publicly available. TRA 97 added paragraph (6) to section 104(a) of ERISA. Prior to the TRA 97 amendments, ERISA required certain documents be filed with the Department so that plan participants and beneficiaries could obtain the documents without having to turn to the plan administrator. The new section 104(a)(6) authorizes the Department to request these documents on behalf of plan participants and beneficiaries. The Department issued a final implementing guidance on this matter on January 7, 2002 (67 FR 772). The ICR was approved by OMB under OMB Control Number 1210-0112 and is scheduled to expire on February 28, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Affordable Care Act Section 2715 Summary Disclosures

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0147

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 858

Responses: 79,500,000

Estimated Total Burden Hours: 622,750

Estimated Total Burden Cost (Operating and Maintenance): \$4,842,500

Description: Section 2715 of the PHS Act directs the Department of Health and Human Services (HHS), the Department of Labor (DOL), and the Department of the Treasury (collectively, the Departments), in consultation with the National Association of Insurance Commissioners (NAIC) and a working group comprised of stakeholders, to "develop standards for use by a group health plan and a health insurance issuer in compiling and providing to applicants, enrollees, and policyholders and certificate holders a summary of benefits and coverage explanation that accurately describes the benefits and coverage under the applicable plan or coverage. To implement these disclosure requirements, collection of information requests relate to the provision of the following: summary of benefits and coverage, which includes coverage examples; a uniform glossary of health coverage and medical terms; and a notice of modifications. The ICR was approved by OMB under OMB Control Number 1210-0147 and is scheduled to expire on February 28, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: ERISA Section 408(b)(2) Regulation

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0133

Affected Public: Businesses or other for-profits

Respondents: 62,137

Responses: 1,274,255

Estimated Total Burden Hours: 1,643,941

Estimated Total Burden Cost (Operating and Maintenance): \$4,199,584

Description: On February 3, 2012, the Department published a final regulation under ERISA section 408(b)(2) (the “408(b)(2) regulation”), requiring that certain service providers to pension plans disclose information about the service providers’ compensation and potential conflicts of interest. These disclosure requirements were established to provide guidance for compliance with a statutory exemption from ERISA’s prohibited transaction provisions. If the disclosure requirements of the 408(b)(2) regulation are not satisfied, a prohibited provision of services under ERISA section 406(a)(1)(C) will occur, with consequences for both the responsible plan fiduciary and the covered service provider. The ICR was approved by OMB under OMB Control Number 1210-0133 and is scheduled to expire on March 31, 2015. **Note:** The Department issued a proposed amendment to this ICR on March 12, 2014, that would, upon adoption, require covered service providers to furnish a guide to assist plan fiduciaries in reviewing the disclosures required by the final rule if the disclosures are contained in multiple or lengthy documents. The comment period for the proposal closed on June 10, 2014, and the Department currently is reviewing the comments.

Agency: Employee Benefits Security Administration, Department of Labor

Title: ERISA Procedure 76-1 Advisory Opinion Procedure

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0066

Affected Public: Businesses or other for-profits

Respondents: 56

Responses: 56

Estimated Total Burden Hours: 573

Estimated Total Burden Cost (Operating and Maintenance): \$1,250,218

Description: Under ERISA, the Department has responsibility to administer the reporting, disclosure, fiduciary and other standards for pension and welfare benefit plans. In 1976, the Department issued ERISA Procedure 76-1, Procedure for ERISA Advisory Opinions (ERISA Procedure), in order to establish a public process for requesting guidance from EBSA on the application of ERISA to particular circumstances. The ERISA Procedure sets forth specific administrative procedures for requesting either an advisory opinion or an information letter and describes the types of questions that may be submitted. As part of the ERISA Procedure, requesters are instructed to provide information to EBSA concerning the circumstances governing their request. EBSA relies on the information provided by the requester to analyze the issue presented and provide guidance. The ERISA Procedure has been in use since 1976, and the Department has issued hundreds of advisory opinions and information letters under its rules. The ICR was approved by OMB under OMB Control Number 1210-0066 and is scheduled to expire on June 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: ERISA Technical Release 91-1

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0084

Affected Public: Businesses or other for-profits

Respondents: 12

Responses: 82,518

Estimated Total Burden Hours: 1,392

Estimated Total Burden Cost (Operating and Maintenance): \$20,715

Description: The information collection requirements arise from ERISA section 101(e), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986.

The notice requirements of section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given and any additional reporting requirements deemed necessary.

Although the Department of Labor has not issued regulations under section 101(e), on May 8, 1991, the Department published ERISA Technical Release 91-1, to provide guidance on how to satisfy the notice requirements prescribed by this section.

The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute. The ICR was approved by OMB under OMB Control Number 1210-0084 and is scheduled to expire on June 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Disclosures by Insurers to General Account Policyholders

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0114

Affected Public: Businesses or other for-profits

Respondents: 104

Responses: 96,223

Estimated Total Burden Hours: 408,948

Estimated Total Burden Cost (Operating and Maintenance): \$33,678

Description: Section 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) (SBJPA) amended added a new section 401(c) to the Employee Income Security Act of 1974 (ERISA). This new section, inter alia, required the Department to

promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are ``plan assets" within the meaning of the Employee Retirement Income Security Act (ERISA), because the policies are not ``guaranteed benefit policies" within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a regulation, issued in final form on January 5, 2000 (65 FR 714), and codified at 29 CFR 2550.401c-1. This regulation has not been amended subsequently. The ICR was approved by OMB under OMB Control Number 1210-0114 and is scheduled to expire on June 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Registration for EFAST-2 Credentials

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0117

Affected Public: Businesses or other for-profits

Respondents: 400,000

Responses: 400,000

Estimated Total Burden Hours: 133,333

Estimated Total Burden Cost (Operating and Maintenance): \$0

Description: ERISA Section 104 requires administrators of pension and welfare benefit plans (collectively, employee benefit plans), and employers sponsoring certain fringe benefit plans and other plans of deferred compensation, to file returns/reports annually with the Secretary of Labor (the Secretary) concerning the financial condition and operation of the plans. Reporting requirements are satisfied by filing the Form 5500 in accordance with its instructions and the related regulations. Beginning with plan year filings for 1999, Form 5500 filings were processed under the ERISA Filing Acceptance System (EFAST), which was designed to simplify and expedite the receipt and processing of the Form 5500 by relying on computer scannable forms and electronic filing technologies.

Beginning with plan year filings for 2009, Form 5500 filings are processed under a new system, the ERISA Filing Acceptance System 2 (EFAST-2), which is designed to simplify and expedite the receipt and processing of the Form 5500 by relying on Internet-based forms and electronic filing technologies. In order to file electronically, employee benefit plan filing authors, schedule authors, filing signers, Form 5500 transmitters, and entities developing software to complete and/or transmit the Form 5500 are required to register for EFAST-2 credentials through the EFAST-2 Web site. Requested information includes: Applicant type (filing author, filing signer, schedule author, transmitter, or software developer); mailing address; fax number (optional); email address; company name, contact person; and daytime telephone number. Registrants must also provide an answer to a challenge question ("What is your date of birth?" or "Where is your place of birth?"), which enables users to retrieve forgotten credentials. In addition, registrants must accept a Privacy Agreement; PIN Agreement; and, under penalty of perjury, a

Signature Agreement. The ICR was approved by OMB under OMB Control Number 1210-0117 and is scheduled to expire on June 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Notice of Blackout Period Under ERISA

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0122

Affected Public: Businesses or other for-profits

Respondents: 46,200

Responses: 6,100,000

Estimated Total Burden Hours: 195,800

Estimated Total Burden Cost (Operating and Maintenance): \$1,900,000

Description: The Sarbanes-Oxley Act (SOA), enacted on July 30, 2002, added ERISA section 101(i), which requires individual account pension plans to furnish a written notice to participants and beneficiaries in advance of any "blackout period" during which their existing rights to direct or diversify their investments under the plan, or obtain a loan or distribution from the plan will be temporarily suspended. Under 306(b)(2) of SOA, the Secretary of Labor was directed to issue interim final rules necessary to implement the SOA amendments. The Department's regulation for this purpose is codified at 29 CFR 2520.101-3. The ICR was approved by OMB under OMB Control Number 1210-0122 and is scheduled to expire on June 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor

Title: Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-Grandfathered Plans

Type of Review: Extension of a currently approved collection of information

OMB Number: 1210-0144

Affected Public: Businesses or other for-profits; Not-for-profit institutions.

Respondents: 1,020,074

Responses: 117,864

Estimated Total Burden Hours: 886

Estimated Total Burden Cost (Operating and Maintenance): \$642,461

Description: The Patient Protection and Affordable Care Act, Public Law 111-148, (the Affordable Care Act) was enacted by President Obama on March 23, 2010. As part of the Act, Congress added Public Health Service Act (PHS Act) section 2719, which provides rules relating to internal claims and appeals and external review processes. The Department, in conjunction with the Departments of the Treasury and Department of Health and Human Services (collectively, the Departments), issued interim final regulations on July 23, 2010 (75 FR 43330), which set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and paragraph (b)(2)(i) of the interim final regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503-1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor in paragraph (b)(2)(ii) of the regulations.

Also, PHS Act section 2719 and the interim final regulations provide that group health plans and issuers offering group health insurance coverage must comply either with a State external review process or a Federal review process. The regulations provide a basis for determining when plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process.

The claims procedure regulation imposes information collection requirements as part of the reasonable procedures that an employee benefit plan must establish regarding the handling of a benefit claim. These requirements include third-party notice and disclosure requirements that the plan must satisfy by providing information to participants and beneficiaries of the plan.

On June 24, 2011, the Department amended the interim final regulations. Two amendments revised the ICR. The first amendment provides that plans no longer are required to include diagnosis and treatment codes on notices of adverse benefit determination and final internal adverse benefit determination. Instead, they must notify claimants of the opportunity to receive the codes on request and plans and issuers must provide the codes upon request.

The second amendment also changes the method plans and issuers must use to determine who is eligible to receive a notice in a culturally and linguistically appropriate manner, and the information that must be provided to such persons. The previous rule was based on the number of employees at a firm. The new rule is based on whether a participant or beneficiary resides in a county where ten percent or more of the population residing in the county is literate only in the same non-English language.

The ICR was approved by OMB under OMB Control Number 1210-0144 and is scheduled to expire on July 31, 2015.

II. Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Joseph S. Piacentini,

Director, Office of Policy and Research,
Employee Benefits Security Administration.

[Billing Code: 4510-29-P]

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